

## GENERAL PURCHASE ORDER TERMS AND CONDITIONS

**AGREEMENT** means any transaction or agreement arising out of, relating to, or contemplated by the relationship of which this purchase order forms a part. The terms and conditions of this document (including the attached purchase order) shall apply notwithstanding any additional or different terms and conditions in any invoice or other document, including without limitation, (i) a purchase order or other instrument submitted by the City of Columbia, SC, (ii) any invoice, confirmation, or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Any document signed or otherwise agreed to by persons other than an authorized City of Columbia representative shall be void and of no effect.

### **ASSIGNMENT**

No contract or purchase order may be assigned, sublet, or transferred without a written consent of the City of Columbia, South Carolina.

### **BREACH/WAIVER**

The failure of either the Contractor or the City to insist upon performance of any provisions of the contract shall not be deemed to be a waiver of the right to insist upon strict performance of such provision or of any other provision of the contract at any time. Waiver of any breach of the contract by the Contractor or the City shall not constitute a waiver of a subsequent breach.

### **CANCELLATION**

This contract, for the protection of both parties, may be cancelled in whole or in part by either party by giving thirty (30) days prior notice in writing to the other party.

**CHOICE-OF-LAW (JAN 2006):** The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. The UN Convention on the International Sale of Goods shall not apply to this agreement.

### **CITY**

The City of Columbia, South Carolina.

### **CODE OF LAWS AVAILABLE (JAN 2006):**

The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at:

<http://www.scstatehouse.gov/code/t11c035.php>

The South Carolina Regulations are available at:

<http://www.scstatehouse.gov/coderegs/Ch%2019.pdf>

**CONTRACTOR:** means the business entering the contract of which this purchase order forms a part.

**CONTRACTOR PERSONNEL:** You shall enforce strict discipline and good order among your employees and other persons carrying out the Work. You shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**CONTRACTOR'S USE OF CITY PROPERTY:** Upon termination of the contract for any reason, the City shall have the right, upon demand, to obtain access to, and possession of, all City properties, including, but not limited to, current copies of all City application programs and necessary documentation, all data, files, intermediate materials and supplies held by you. You shall not use, reproduce, distribute, display, or sell any data, material, or documentation owned exclusively by the City of Columbia, South Carolina without the City's written consent, except to the extent necessary to carry out the Work.

**CONTRACTOR'S OBLIGATION - GENERAL:** You shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the Work. You must act as the prime contractor and assume full responsibility for any subcontractor's performance. You will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements.

**DELIVERY / PERFORMANCE LOCATION:** F.O.B. Destination. Destination is the shipping dock of the City of Columbia's designated receiving site, or other location, as specified herein. All services shall be provided at the location specified herein.

#### **DEFAULT**

In case of default, the Purchaser reserves the right to purchase any or all items on the open market, charging contractor with any excessive costs. Should such charges be assessed, no subsequent bids of the defaulting contractor shall be considered until the assessed charges have been satisfied.

**DRUG FREE WORK PLACE CERTIFICATION:** You certify that you will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

#### **ETHICS**

The Contractor is subject to the provisions of the 1991 Ethics Reform Act (8-13-100, et seq, South Carolina Code of Laws, 1976, as amended). Under this Act, "A person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with intent to:

- (1) influence the discharge of a public official's, public member's, or public employee's official responsibilities;
- (2) influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or
- (3) induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official's, public member's, or public employee's official responsibilities. "Anything of value" includes, but is not limited to, lodging, transportation, entertainment, food, meals, beverages, money, gifts, honorariums, discounts and interest-free loans.

#### **FACILITIES**

The City reserves the right to inspect the bidder's facilities at any reasonable time with prior notice.

**ILLEGAL IMMIGRATION:** (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) By accepting this purchase order, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title

8, Chapter 14. You agree to include in any contracts with your subcontractors language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

**IRAN DIVESTMENT ACT - CERTIFICATION:** (a) The Iran Divestment Act List is a list published by the Board pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at [procurement.sc.gov](http://procurement.sc.gov) (.). Section 11-57-310 requires the government to provide a person ninety days written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State to award a contract to you. (b) By accepting this purchase order, you certify that, as of the date you accept, you are not on the then-current version of the Iran Divestment Act List.

### **ETHICS CERTIFICATE (STATE)**

By accepting this purchase order, you certify that you have and will comply with, and have not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The State may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8 13-1150 to the Procurement Officer at the same time the law requires the statement to be filed.

### **FORCE MAJEURE**

Neither the City nor the contractor shall be liable for any excess costs if failure to perform the contract arises out of causes beyond the control and without the fault or negligence of either party. Such causes may include, but not restricted to acts of God or of the public enemy, acts of government in either its sovereign or contractual capacity, fires, floods epidemics, quarantine, restrictions, strikes, freight embargos, and unusually severe weather conditions; but in every case, the failure to perform is caused beyond the control of both the City and the contractor, and without the fault or negligence of either of them.

## **IDEMNIFICATION (CITY OF COLUMBIA, SC)**

The Contractor will agree to indemnify, defend, hold harmless and reimburse the City, its agents, and employees from and against any and all losses, liabilities, expenses, and all claims for damages of any nature whatsoever relating to or arising out of any action or failure to act by respondent, its subcontractors, officers, agents and employees of any of the obligations under the contract. Losses, liabilities, expenses and claims for damages shall include, but will not be limited to, civil and criminal fines and penalties, loss of use or services, bodily injury, death, personal injury, or injury to real or personal property, defense costs, legal fees and costs, and attorney's fees for an appeal.

The Contractor will also agree to promptly notify the City of any civil or criminal actions filed against the respondent or of any notice of violation from any federal or state agency, or of any claim as soon as practical as relates to the services provided. The City, upon receipt of such notice, shall have the right at its election to defend any and all actions or suits or to join in defense.

## **IDEMNIFICATION-THIRD PARTY CLAIMS – GENERAL 2011 (STATE LAW)**

Without limitation, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.

## **INSPECTION**

All goods are subject to final inspection and acceptance by the City. Material failing to meet the requirements of this Purchase Order will be held at the Contractor's risk and may be returned to the Contractor. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping and/or other like expenses, are the responsibility of the Contractor.

## **INSPECTION, ACCEPTANCE & TITLE**

Inspection and acceptance will be at destination unless otherwise provided. Title and risk of loss or damage to all items shall be the responsibility of the contract supplier until accepted by the

ordering agency unless loss or damage results from negligence by the ordering agency. The contract supplier shall be responsible for filing, processing and collecting all damage claims. However, to assist him in the expeditious handling of damage claims, the ordering agency will:

- A. Record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading.
- B. Report damage (Visible and Concealed) to the carrier and contract supplier, confirming such reports, in writing, within 15 days of delivery, requesting that the carrier inspect the damaged merchandise.
- C. Retain the item and its shipping container, including inner packing material, until inspection is performed by the carrier, and disposition given by the contract supplier.
- D. Provide the contract supplier with a copy of the carrier's Bill of Lading and damage inspection report.

## **INVOICING & PAYMENT**

The contractor shall be paid upon submission of properly certified invoices to the City of Columbia Accounting Division, P.O. Box 147, Columbia, S.C. 29217. At the prices stipulated on the contract at the time the order is placed, after delivery and acceptance of goods, less deductions if any, as provided, invoices shall contain the Contract Number and Purchase Order Number. The City of Columbia will not pay invoices submitted from a third party. Invoices shall be submitted by the company shown on the Purchase Order.

## **LIABILITY:**

The supplier shall hold and save the City of Columbia, its officers, agents and employees harmless against the claims by third parties resulting from the supplier's breach of this contract or the supplier's negligence.

**LICENSES AND PERMITS (STATE OF SOUTH CAROLINA):** You are responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State of South Carolina, county, city or other government entity or unit to accomplish the Work.

## **LICENSES, PERMITS AND TAXES (CITY OF COLUMBIA, SC)**

It shall be the responsibility of the contractor to secure all Local, State, and/or Federal License and Permits required by law, state or ordinance to perform work.

All costs for required permits, licenses and taxes shall be borne by respondent.

Where proposers are required to enter or go onto City of Columbia property to deliver materials or perform work or service as a result of a proposal award, the successful proposer will assume the full duty, obligation and expense of obtaining all necessary licenses, permits and insurance and assure all work complies with all applicable Richland County and City of Columbia building requirements and State of South Carolina Building Code. The bidder shall be liable for any damages or loss to the City occasioned by negligence of the bidder (or agent) or any person the bidder has designated in the completion of the contract as a result of his or her bid.

## **MATERIAL AND WORKMANSHIP**

Unless otherwise specifically provided in the purchase order, all equipment, material, and articles incorporated in the Work are to be new and of the most suitable grade for the purpose intended.

## **MANUFACTURER'S NAME & APPROVED EQUIVALENTS**

Any manufactures names, trade names, brand names, information and/or catalogue numbers listed in a specification are for information and are not intended to limit competition. The bidder may offer any brand for which he is an authorized representative, which meets or exceeds the specification for any item(s). If proposals are based on equivalent products, indicate on the proposal form the manufacturer's name and number. Bidder shall submit with his proposal cuts, sketches and descriptive literature and/or complete specifications. Reference to literature submitted with a previous proposal will not satisfy this provision. The bidder shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. The City Columbia reserves the right to determine acceptance of item(s) as an approved equivalent. Proposals, which do not comply with these requirements, are subject to rejection. Proposals lacking any written indication of intent to submit with an alternate brand will be received and considered in complete compliance with the specifications as listed on the proposal form. The Department of Procurement and Contracts is to be notified of any proposed changes in (a) materials used, (b) manufacturing process, or (c) construction. However, changes shall not be binding upon the City unless evidenced by a Change Order issued and signed by the City's Purchasing Agent.

## **MODIFICATION:**

No modification of the purchase order shall bind the City unless the City agrees to the modification in writing.

## **NON-DISCRIMINATION IN CONTRACTING POLICY:**

In carrying out the service, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation or national origin. The Contractor shall take affirmative action to ensure equal employment opportunities for all applicants for employment, without regard to their race, creed, color, religion, ancestry, sex, sexual orientation, national origin, disability or other handicap, age, marital status, or status with regard to public assistance. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the government setting forth the provisions of this nondiscrimination clause. The Contractor will incorporate these nondiscrimination requirements in all subcontracts for service work.

**NO INDEMNITY OR DEFENSE:** Any term or condition is void to the extent it requires the City to indemnify, defend, or pay attorney's fees to anyone for any reason.

## **OWNERSHIP OF DATA & MATERIALS**

All data, material and documentation prepared for the City pursuant to this Agreement shall belong exclusively to the City.

## **PACKING AND SHIPPING**

Contractor shall be responsible for industry standard packing which conform to requirements of carriers' tariffs and ICC regulations. Containers must be clearly marked as to lot number, destination address and purchase order number.

## **PAYMENT & INTEREST**

(a) The City shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted. (b) Unless otherwise agreed, payment will be made by check mailed to the address appearing on the purchase order form. (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, the State shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason. (d) Amounts due to the State shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 ("an amount not to exceed fifteen percent each year"), as amended, unless otherwise required by Section 29-6-30. (e) Any other basis for interest, including but not limited to general (pre- and post- judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding. (f) The State shall have all of its common law, equitable and statutory rights of set-off.

## **PATENTS & ROYALTIES:**

The Contractor, without exception, shall indemnify and hold harmless the City of Columbia and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process or article manufactured or used in the performance of the contract, including its use by the City of Columbia. If the bidder uses any design, device or materials covered by letters, copyright or patent, it is mutually agreed and understood without exception that the bid prices shall include all royalties or cost arising from the use of such design, device, or materials in anyway involved in the work.

## **PRICE ADJUSTMENTS:**

Any price decrease effectuated during the contract period by reason of market change shall be passed on to the City of Columbia. This shall also apply to all in-place equipment or rent or lease plans.

## **PROCUREMENT OFFICER/PURCHASING AGENT/BUYER/CONTRACTING OFFICER:**

For the purpose of City of Columbia, SC procurements, these titles mean the person executing this purchase order.

**PUBLICITY**

Contractor shall not publish any comments or quotes by the City of Columbia, SC, or include the City in either news releases or a published list of customers, without the prior written approval of the City Manager and/or his authorized designee.

**SALES TAX AND/OR USE TAX**

Upon submission of a bid or quote to the City, the Department of Procurement and Contracts will compute 8% sales and use tax when applicable (service and labor excluded) and include in the PO total, as applicable. The tax rate applied is in accordance to the SC Tax Commission Sales and Use Tax Regulation 447-174-95. Please also see invoicing procedures.

**SERVICE & WARRANTY:**

All warranties presented to the City at the time of award are applicable to this purchase order transaction.

**SC ILLEGAL IMMIGRATION REFORM ACT (STATE LAW):**

Chapter 14 of Title 8 of the SC Code of Laws (July 2008). By signing this offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the City of Columbia upon request any documentation required to established either: (a) that Title 8, Chapter 14 is inapplicable both to you and your subcontractors or sub-contractor; or (b) that you and your subcontractors or sub-contractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony and upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractor's language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with their sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

**SEVERABILITY:**

In the event that any provision of the contract is determined to be void or unenforceable, all other provisions shall remain in full force and effect.

**SPECIAL CLAUSES:**

This procurement was entered into under the terms and conditions outlined in the State of SC's contract number as aforementioned above. The City of Columbia's general terms and conditions shall also apply as applicable. The successful contractor, consultant and/or vendor shall be subject to following all provisions stated in both the State and City's terms and conditions, if applicable. In case of conflicting provisions, the State of SC's contract provisions shall supersede on this procurement.

**SUBCONTRACTORS:**

Contractors planning to subcontract a portion of this contract will need to identify and submit a list with their bid of their proposed subcontractors. The City has the right to check the subcontractors' background and make a determination on either approving or rejecting the use of a proposed subcontractor. Any negative response may result in the disqualification of the subcontractor. The use of subcontractors will not relieve prime contractor of any obligations and the awarding contractor remains liable for full and satisfactory performance per the contract term and conditions.

**SUCCESSORSHIP:**

The contract shall be binding upon the respondent and upon its successors and assignees. The contract shall be binding upon the City in accordance with its terms and provisions.

**STATE LAW APPLICABLE:**

The contract shall be construed in accordance with the laws of the State of South Carolina. The respondent agrees to subject itself to the jurisdiction and venue of the Circuit Courts in Richland County, State of South Carolina as to all matters and disputes arising or to arise under the contract and the performance thereof. The City may seek attorney's fees and the respondent agrees to pay such fees as awarded by the Court or other body. No attorney's fees may be sought by nor will be paid to the respondent.

**STATE:**

The State of South Carolina.

**TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006):**

Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term.

**TERMINATION:**

The City may terminate the contract at any time upon any of the following grounds: 1) Failure by the City to appropriate funds in its budget to pay the respondent for the requested service; 2) The respondent fails to perform any of the services required in the contract, and does not correct such deficiency within fifteen (15) days after having been notified of such deficiency by the City; 3) force majeure; 4) Upon expiration of the term of the agreement; 5) by mutual agreement; and 6) For the convenience of the City, at the City's discretion, for any reason whatsoever deemed to be in the best interests of the City.

In the event that the contract is wrongfully terminated under any of the other grounds enumerated herein, termination shall be treated as a termination for convenience. If the contract is terminated for convenience, or wrongfully terminated upon any of the other grounds enumerated herein, the Contractor shall be entitled to payment as follows: the actual cost of the work completed in conformity with the agreement plus ten percent (10%) for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to the Contractor prior to the date of termination of the agreement. The contractor shall not be entitled to any claim against the City for any additional compensation or damages in the event of such termination and payment.

**TITLE AND RISK OF LOSS:**

The title and risk of loss of the goods shall not pass to the City until the City actually received the goods at the point of delivery.

**WHOLE AGREEMENT:**

The contract shall contain the entire agreement between the City and respondent. In order to be binding, any modification thereof shall be in writing and signed by the City and the respondent.

**WORK:**

WORK means all labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill its obligations under the Contract.

**YOU AND YOUR:**

YOU and YOUR means Contractor.

**OTHER APPLICABLE TERMS AND CONDITIONS:**

**The seller agrees that the following terms and conditions will be applicable thereto.**

If seller refuses to accept this order exactly as written, he will return it at once with explanation.

Purchaser will not be responsible for any goods delivered without purchase order.

Seller will deliver no invoices to purchaser's employees. Properly certified invoices should be submitted to the City of Columbia Accounting Division, P.O. Box 147, Columbia, S.C. 29217 at the prices stipulated on the contract at the time the order is placed, after delivery and acceptance of goods, less deductions if any, as provided, invoices shall contain the Contract Number and Purchase Order Number. The City of Columbia will not pay invoices submitted from a third party. Invoices shall be submitted by the company shown on the Purchase Order.

In the event of seller's failure to deliver as and when specified or to perform as and when specified, purchaser reserves the right to cancel this order, or any part thereof, without prejudice to its other rights, and seller agrees that purchaser may return part or all of any shipment so made and may charge seller with any loss or expense sustained as result of such failure to deliver or to perform.

**Terms: Net 30 days**

Upon award to the vendor by the appropriate authority, the terms and conditions contained in the invitation to bid and any attached specifications or other documents attached thereto shall become the contract between the City of Columbia and the vendor.

Should funds not be appropriated by Columbia City Council during any of its fiscal years necessary to pay the City's monetary obligations under the contract, this contract shall immediately terminate, without further obligation by the City of Columbia.

If this invitation to bid is for professional services to be rendered by the vendor, the Addendum to the Invitation for Bids for Professional Services shall apply as if fully set forth herein verbatim.